UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
INSPECTOR GENERAL

March 10, 2010

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Concur: Case Closed

MEMORANDUM TO: Joseph A. McMillan
Assistant Inspector General
for Investigations

FROM: (b)(7)(C)

SUBJECT: MULTIPLE ALLEGATIONS REGARDING NRC OVERSIGHT OF NUCLEAR FUEL SERVICES (OIG CASE NO. 09-49)

Allegation

The Office of Inspector General (OIG), Nuclear Regulatory Commission (NRC), met with Concerned Individuals (CIs) on February 24, March 20, and April 11, 2009. The CIs reported the following six allegations:

- Allegation #1: On October 18, 2007, the NRC issued a *Federal Register* notice announcing that the NRC had received a license amendment request from Nuclear Fuel Services (NFS) for increasing the fuel enrichment limit. The NRC then approved the license amendment on November 23, 2007, before the December 17, 2007, deadline for public comment.

- Allegation #2: NRC accommodates problems at NFS because the facility's primary products are associated with Department of Energy (DOE) programs including down-blended uranium (BLEU) and naval reactors activities. Specifically, the NRC agreed to a DOE request to withhold all information regarding NFS from the public for an extended period of time.

- Allegation #3: The Department of Health and Human Services' (HHS) Agency for Toxic Substances and Disease Registry (ATSDR) was influenced by either DOE or NRC (or both) to find that the NFS facility is not a significant health hazard.

- Allegation #4: NRC failed to initially conduct a detailed investigation of an NFS senior official who was intoxicated at the NFS facility.

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- Allegation #5: NRC has not enforced the 2007 Confirmatory Order that required that NFS undertake an independent review of safety culture at NFS.

- Allegation #6: NRC reassigned an NRC resident inspector from NFS to another NRC regulated site because the inspector was pushing NFS too hard and asking to many questions.

Findings

OIG found that five of the six allegations were addressed in previous OIG investigations. With regard to allegation #5 which was not addressed in a previous investigation, OIG found that NRC has enforced the Confirmatory Order through its completion of four Licensee Performance Reviews (LPRs) at NFS of its safety culture improvement program since the order was issued. Additionally, OIG followed up on Allegation #2 (which was addressed in a prior investigation) and learned that on September 21, 2007, all previously withheld documents were placed on the NRC public Web site. This action was to correct the NRC's misapplication of its June 2004 policy which directed NRC staff to designate correspondence between NFS and BWX Technologies (BWXT) related to DOE Office of Naval Reactors activities as "Official Use Only" (OUO).

Basis of Findings

Allegation #1, NRC Not Following Rules in its Approval of License Amendment Before Deadline for Public Comment was substantiated in OIG Case Number 07-56, Non-Disclosure of Incident at NFS. OIG interviewed Office of Nuclear Material Safety and Safeguards (NMSS) management and an Office of the General Counsel (OGC) attorney, who stated that on November 23, 2007, NMSS approved the licensee's amendment request to increase the fuel enrichment storage limit. NRC staff stated that according to Section 189 of the Atomic Energy Act (AEA), the adjudication process is separate from regulatory review, and that NRC can issue a licensing action prior to the expiration of the period for public comments because NRC can always rescind its licensing action as a result of adjudication action.

Allegation #2, NRC Agreed to a DOE Request to Withhold All Information Regarding NFS from Public was substantiated in OIG Case Number 07-56. OIG found that the agency misapplied NRC's June 2004 policy to withhold from the public all information on DOE NR activities involving NFS and BWXT fuel cycle facilities. The June 2004 policy directed NRC staff to designate all future correspondence with NFS and BWXT related to the NRC programs as OUO and to withhold it from public disclosure. However, instead of withholding only the NR-related information, NRC withheld information on all activities at these facilities, regardless of whether the information related to NR or commercial operations. Additionally, OIG interviewed the Deputy Director, Division of Fuel Cycle Safety and Safeguards, NMSS, who stated that in late 2007, a determination was made by OGC that the AEA required

such information be made public. Therefore, on September 21, 2007, all previously withheld documents were placed on the NRC public Web site for a period of 60 days. Many of the documents were in redacted form. There were no requests from the public for any hearings regarding any of the newly released information. OIG reviewed NMSS documents, and learned that the information withheld from the public was posted on the NRC public Web site for the public to review and, if interested, request a hearing.

Allegation #3, ATSDR Was Influenced by NRC to Find That NFS Facility is Not a Significant Health Hazard was unsubstantiated in OIG Allegation Number 08-6101, Failure of Region II to Contribute to a 2007 Public Health Assessment of NFS Erwin. Region II management informed OIG that ATSDR is a Federal agency of the U.S. Public Health Service that conducts public health assessments of sites on the Environmental Protection Agency's (EPA) National Priorities List to determine if people are being exposed to hazardous substances. ATSDR assessed NFS and ranked the site as "No Apparent Public Health Hazard." The assessment of NFS was an independent review conducted by ATSDR, whose mission was outside the scope of NRC's mission. When Region II became aware of ATSDR Atlanta Office's intent to assess NFS in 2003, Region II offered ATSDR the assistance of NRC Region II. ATSDR never accepted any input or assistance from NRC Region II in its assessment of NFS.

Allegation #4, NRC Fails to Initially Conduct a Detailed Investigation of an NFS Senior Official Intoxicated at NFS was substantiated in OIG Case Number 08-36, Region II's Handling of Fitness for Duty Allegation Regarding NFS, and 08-42, NRC's Process for Reviewing Security Related Information. OIG found that in March 2006, Region II improperly referred to the licensee an allegation that the licensee president attended a force-on-force exercise under the influence of alcohol. Per NRC Management Directive (MD) 8.8, an allegation should not be referred to a licensee if it is made against the licensee's management or those parties who would normally receive and address the allegation. Region II's referral violated MD 8.8's instruction not only because the allegation subject was a licensee high-level management official, but also because that was the individual who was typically responsible for receiving and handling NRC allegation referrals. Additionally, the Agency Allegation Advisor told OIG on December 9, 2009, that NRC issued interim guidance which states that NRC is prohibited from issuing a Request for Information (RFI) to a licensee if "the concern is against senior licensee management, such that an independent and effective evaluation is unlikely through the use of an RFI."

Regarding Allegation #5, NRC Not Enforcing a Confirmatory Order Issued to NFS, OIG learned that Luis Reyes, NRC Regional Administrator, Region II, issued a memorandum to Martin J. Virgillo on January 6, 2010, regarding Region II's final LPR of NFS. In the letter, it stated that since issuance of the Confirmatory Order in February 2007, NRC has completed four LPRs at NFS. The most recent LPR was in August 2009. In these performance assessments, the NRC staff noted that NFS continued to implement its safety culture improvement plan.

Regarding Allegation #6, NRC Inspector at NFS Reassigned As A Result of Pushing NFS Too Hard and Asking Too Many Questions, OIG learned that the Region II Senior RI at NFS left the position after he applied for and was promoted to Branch Chief in the Division of Fuel Facility Inspections at Region II (OIG Case Number 08-34).

Because five of six allegations were previously reviewed, the remaining allegation was unsubstantiated, and NRC placed all previously withheld documents involving DOE NR activities on the NRC Website, it is recommended that this case be closed to the files of this office.